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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal No.716 of 2005

Sadhram Satnami and another

versus

Kanhaiya Satnami and others

ORDER

Post for 27- 8 -2007

Sd/-
Dilip Raosaheb
Deshmukh
Judge

(12-5)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal No.716 of 2005

Appellants

1. Sadhram Satnami, S/o Shri Mochan, Aged about 45 years, Resident of : Qr. No.1 – C / Street – SPA, /Sector – 11, Bhilai, District : Durg (CG), Presently residing at : Village : Khokhli, Post and Tahsil : Bhatapara, Dt. Raipur CG.
2. Bhagirathi Satnami, S/o Sadhram Satnami, Aged about 24 years, Resident at : Village : Khokhli, Post and Tahsil : Bhatapara, District : Raipur (CG)

versus

Respondents

1. Kanhaiya Satnami, S/o Ludu, Aged about 60 years, Resident at : Village : Jaroud, Tahsil : Simga, Dt. Raipur CG
2. Shyam Sundar Agrawal, S/o Not Known, aged about 62 years, Resident at : Village : Tilda, Distt. : Raipur CG
3. Ramesh Kumar Gyanchandani, S/o Shri Lahrumal, Aged about 45 years, Resident at : Village : Tilda, Distt. Raipur CG

Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988

Present : Shri K.R.Nair, counsel for the appellants.
Shri B.M.Rao, counsel for respondent No.1.
None appears for other respondents.

ORDER

(Passed on 27-08-2007)

This appeal is directed against the award dated 28-07-2004 passed by the Ist Additional Motor Accidents Claims Tribunal, Baloda Bazar, District Raipur (henceforth 'the MACT') in Claim Case

No.49/2003 awarding compensation of Rs.30,005/- to respondent No.1/claimant for the personal injuries suffered by him on 12-08-2002.

(2) Brief facts as unfolded by the application under Section 166 of the Motor Vehicles Act, 1988 (henceforth 'the Act, 1988') are that respondent No.1/claimant was working as an agricultural labourer in Village Dhaurabhatha. Appellant No.2, Bhagirathi was driving the Tractor No.CIT 8266 (henceforth 'the tractor') for ploughing the agricultural field. Respondent No.1/claimant was asked to stand on the plough while the tractor was moving. Due to negligence of the driver, the right foot of respondent No.1/claimant came under the plough causing a deep incised wound 6 inches in length on his right foot. The accident was not reported because appellant No.2, Bhagirathi promised to bear the expenses incurred by respondent No.1/claimant towards treatment. Respondent No.1/claimant took local treatment in the hospital of one Dr. Thakur at Bhatapara for 8-9 days. Thereafter, due to a serious infection, respondent No.1/claimant was admitted in Jeevanmal Hospital at Bhatapara from 07-09-2002 to 01-10-2002 and thereafter took treatment as an outdoor patient till 17-11-2002. It was also pleaded that report of the accident was lodged on 28-09-2002 by the applicant at the Gramin Police Station, Bhatapara, but no action was taken by the Police. It was also pleaded that on the date of accident respondent No.3, Ramesh Kumar Gyanchandani was the registered owner of the tractor and had sold it to appellant No.1, Sadhram, who was in possession and charge of the tractor at the time of accident. Appellant No.2, Bhagirathi is the son of appellant No.1, Sadhram. Compensation of Rs.82,000/- was claimed by respondent No.1/claimant.

(3) Respondent No.3, Ramesh Kumar Gyanchandani pleaded that since on 25-06-2001, he had sold the tractor to appellant No.1, Sadhram and had also delivered possession, he was not liable to pay compensation.

(4) Appellant No.2, Bhagirathi, denying the claim in toto, pleaded that his father Sadhram had purchased the tractor from respondent No.3, Ramesh Kumar Gyanchandani, but the same was not registered in the name of Sadhram. On 11-08-2002, the tractor was handed over to Baba Engineering and Motor Workshop, Bhatapara for repairs and remained there till 15-08-2002. A copy of the receipt dated 15-08-2002 issued by Baba Engineering and Motor Workshop, Bhatapara was also filed. It was also pleaded that respondent No.1/claimant was working continuously in the new pond construction work with effect from 09-12-2002 to 14-12-2002 and from 23-12-2002 to 27-12-2002 and received wages for the same. A certificate issued by the Sarpanch of the Gramin Panchayat was also filed. In this manner, appellant No.2, Bhagirathi denied that the tractor was involved in any manner in the accident on 12-08-2002. Appellant No.1, Sadhram did not file written statement.

(5) Respondent No.1/claimant, besides examining himself, also examined Dr. S.K.Jeevanmal, A.W.-1, an eye-witness Sadhelal, A.W.-3 and Jeevan Jogi, A.W.-4, witness of the Panchayat. The appellants deposed before the MACT and also adduced evidence of Mechanic Mohd. Jabbar, N.A.W.-3 and Sarpanch Hariram Sahu, N.A.W.-2. Respondent No.3, Ramesh Kumar Gyanchandani also testified before the MACT.

(6) On appreciation of evidence, the MACT held that the accident was caused due to rash and negligent driving of the tractor by appellant No.2, Bhagirathi, due to which, respondent No.1/claimant had suffered a 6 inches long wound between the toes of the right foot. It was also held that the tractor had been sold by respondent No.3, Ramesh Kumar Gyanchandani to appellant No.1, Sadhram, who was in possession and charge of the tractor at the time of the accident and at whose instance appellant No.2, Bhagirathi was driving the tractor for ploughing the agricultural field. On these premises, it awarded compensation of Rs.30,005/- against the appellants.

(7) Shri K.R.Nair, learned counsel for the appellants argued that the findings recorded by the MACT were perverse and contrary to law. The MACT did not take into consideration the fact that the appellants had proved that on the date of the alleged accident, the tractor was in the workshop for repairs. The MACT had also ignored the unrebutted testimony of Hariram Sahu, N.A.W.-2 that the claimant had been working in the relief works continuously till 27-12-2002 and had received payment. Lastly, placing reliance on ***Smt. Lili Bora*** **vs.** ***Smt. Nishi Rani Hazarika and Ors.***, **AIR 2007 Gauhati 65**, it was urged that since on the date of accident the registered owner of the tractor was Ramesh Kumar Gyanchandani, liability to pay compensation could not be fastened on appellant No.1, Sadhram.

(8) On the other hand, Shri B.M.Rao, learned counsel for respondent No.1/claimant argued in support of the impugned award. No one appeared for respondents No.2 and 3 at the time of hearing.

(9) Respondent No.2, Shyam Sundar Agrawal, who had sold the tractor to respondent No.3, Ramesh Kumar Gyanchandani, did not contest.

(10) Having considered the rival submissions, I have perused the record with utmost circumspection. The burden of proving the factum of sustaining injury to the right foot due to the accident by the tractor on 12-08-2002 was entirely on the claimant. The claimant did not examine Dr. Thakur at whose hospital he had alleged to have undertaken treatment for 8-9 days after the accident. No documentary proof in this regard was filed. The testimony of Hariram Sahu, N.A.W.-2, Sarpanch of Village Jaroud shows that respondent No.1/claimant had worked in the relief work from 09-12-2002 to 27-12-2002 and had received payment. A certificate to that effect issued by the Gram Panchayat, Jaroud, Ex.D-2 was also proved. There is not even an iota of material in cross-examination to rebut the testimony of Hariram Sahu. In cross-examination, it was asked that son of respondent No.1/claimant had worked in place of the claimant and had drawn wages in the name of the claimant. However, the testimony of Hariram Sahu and the certificate, Ex.D-2 clearly belie such an inference.

(11) The medical evidence adduced by respondent No.1/claimant is not worth reliance. Dr. S.K.Jeevanmal, A.W.-1 testified that respondent No.1/claimant was admitted in his hospital at Bhatapara. In order to avoid filing of cash memos for purchase of medicines during hospitalisation, Dr. S.K.Jeevanmal, A.W.-1 stated that during hospitalisation medicines were supplied from the hospital. However, the certificate, Ex.P-1 given by Dr. S.K.Jeevanmal, A.W.-1 shows that

x-ray of the right foot was taken and various pathological tests were performed. Neither the x-ray report nor the pathological reports were filed. The testimony of Dr. S.K.Jeevanmal, A.W.-1 and the certificates issued by him are rendered false due to the admission by respondent No.1/claimant in para 4 of the application under Section 166 of the Act, 1988 that he had lodged a report on 28-09-2002 in the Gramin Police Station at Bhatapara. If respondent No.1/claimant was admitted in the hospital of Dr. S.K.Jeevanmal from 07-09-2002 to 01-10-2002, he could not have gone to lodge the report at the Gramin Police Station, Bhatapara on 28-09-2002. It shows that a false certificate has been obtained by the claimant. It is also pertinent to note that the certificate is not a discharge ticket issued by the hospital to the patient, but has been given after almost 16 days thereafter. No explanation is forthcoming for not filing the discharge ticket or the x-ray and pathological reports. The outdoor patient ticket for the treatment taken by respondent No.1/claimant from 02-10-2002 to 17-11-2002 was also not filed. Dr. S.K.Jeevanmal, A.W.-1 admitted in para 6 of cross-examination that he was unable to state the duration of the injury as also whether the injury suffered by the claimant Kanhaiya were due to an accident and whether Kanhaiya had taken treatment at some other place also. It is also pertinent to note that Dr. S.K.Jeevanmal, A.W.-1 did not mention the nature of the injury suffered by the claimant Kanhaiya in the right foot either in the certificate Ex.P-1 or Ex.P-2. Ex.P-2 does not mention whether the injury was an incised wound or a lacerated wound, but only shows that some infection, which was 6 inches long, had been caused on the dorsum of the right foot. The testimony of respondent No.1/claimant that his right foot was literally torn into two pieces due to the accident is not worthy of credit. Had it

been so, respondent No.1/claimant would have definitely lodged a report in the Police Station. No explanation is given by Sadhelal, A.W.-3 as to why a report was not lodged at the Police Station. He also did not mention a word about the nature of injury, if any, suffered by respondent No.1/claimant. In cross-examination, this witness was also not able to state the date and time of the accident. Jeevan Jogi, A.W.-4 has admitted in cross-examination that he did not witness the accident. His testimony that Sadhram, N.A.W.-4 had agreed to pay not more than Rs.3,000/- at the Panchayat is also unworthy of credit because no document was filed to show the proceedings of the Panchayat meeting.

(12) No explanation is forthcoming for not producing a copy of the report lodged by the claimant at the Gramin Police Station, Bhatapara on 28-09-2002. As already stated, the claimant could not have lodged any such report on 28-09-2002 if he was hospitalised at Bhatapara till 01-10-2002. An adverse inference ought to have been drawn against the claimant on this count also that the report would have divulged that the injury was not sustained in the accident on 12-08-2002 by the tractor.

(13) The appellants had examined the mechanic Mohd. Jabbar, to prove that on 11-08-2002, appellant No.2, Bhagirathi had left the tractor for repairs in his workshop and had taken it back on 15-08-2002. The bill, Ex.D-1 fully corroborates the testimony of Mohd. Jabbar, N.A.W.-3. The testimony of appellant No.2, Bhagirathi is also wholly unrebutted in cross-examination that the tractor was not involved in any accident on 12-08-2002 which was left by him at the Baba Engineering and Motor Workshop, Bhatapara on 11-08-2002 and taken back on 15-08-2002.

(14) From the foregoing discussion, it is clear that respondent No.1/claimant had failed to prove that due to an accident by the tractor on 12-08-2002, he had suffered an injury to his right foot. The appeal deserves to be allowed on this ground alone

(15) So far as the question of awarding compensation against the appellants is concerned, in ***Smt. Lili Bora*** **vs.** ***Smt. Nishi Rani Hazarika and Ors.*** (supra), tracing the shift in the definition of "owner" as appearing in Section 2(19) of the Motor Vehicles Act, 1939 and the definition emerging in Section 2(30) of the Act, 1988, and the legislative intention behind it, the High Court of Gauhati has held as under:

> "11. From a careful reading of the definition of owner, as the same appeared in Section 2(19) of the M.V. Act, 1939, it is clear that a person, who was major and in possession of a motor vehicle, could have been regarded as owner thereof under the M.V. Act, 1939. Thus, in terms of the definition of the word 'owner', as given in Section 2(19) of the M.V. Act, 1939, whoever had the control and possession of a vehicle could have been regarded as owner of the vehicle. This definition and concept of owner under the M.V. Act, 1939, stands materially changed in the M.V. Act, 1988, for Section 2(30) of the M.V. Act, 1988, which defines owner, now, reads as under :-
>
> > "2. Definitions. – In this Act, unless the context otherwise requires,
> > * * * * *
> > (30) "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle, which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;"
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> 12. From a cautious and microscopic reading of the definition of 'owner', as the same occurs in Section 2(30) of the M.V. Act, 1988, it becomes clear that a person, in order to be regarded as an owner, must have the vehicle registered in his name and where such a person is a minor, then, his guardian would be regarded as the owner. Section

2(30) of the M.V. Act, 1988 also indicates that in relation to a motor vehicle, a person may be regarded as owner, though he may not be the registered owner of the vehicle, provided that he is in the possession of the vehicle either on the strength of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation. In other words, apart from a person, in whose name a vehicle stands registered, even the person, who is in possession of a vehicle pursuant to a hire-purchase agreement, an agreement of lease or an agreement of hypothecation, would be regarded as owner.

13. What logically follows from the above is that if a person is not a registered owner of a vehicle or his possession of the vehicle is not pursuant to the three specified forms of agreement, namely, hire-purchase agreement, agreement of lease or agreement of hypothecation, such a person would not be regarded as owner of the vehicle.

14. What further follows from the above discussion is that in the M.V. Act, 1939, emphasis for being regarded as 'owner' of a vehicle was on the control and possession of the vehicle; whereas in the M.V. Act, 1988, emphasis has shifted from 'possession' to 'registration' and, accordingly, unless a vehicle is registered in the name of a person, he cannot be regarded as owner of the vehicle. This general principle is, however, subject to three specified exceptions, namely, that a person in possession of a vehicle may also be regarded as owner thereof provided that he comes into possession of the vehicle in any of the said three specified modes of agreement, namely, (i) hire-purchase agreement, (ii) agreement of lease, or (iii) agreement of hypothecation. Thus, while under the M.V. Act, 1939, even a person, who might have had stolen a vehicle and committed an accident, could have, perhaps, been regarded as the owner of the vehicle, for, he had the control and possession of the vehicle, the definition of owner, now, given under M.V. Act, 1988, makes it clear that the possession of a vehicle has to be acquired through the three specified modes, as given under Section 2(30), in order to treat a person as owner of a vehicle on the basis of his possession alone. This change, in the mode of definition of 'owner', appears to have been made by the legislature in order to help the victims of road traffic accidents. A vehicle, in order to be used in a public place, needs to have compulsory insurance, in terms of Section 147 of the M.V. Act, 1988, so as to safeguard the interest of a third party. Whoever may come to possess the vehicle, the registered owner of the vehicle would be regarded as the owner of the vehicle and the insurer would remain liable to pay compensation to a third party even if the vehicle meets with an accident, when the registered owner of the vehicle did not have the control and possession over the vehicle.

> **15.** Having regard to the definition of owner, as occurs in Section 2(30) of the M.V. Act, 1988, which is distinguishable from the definition of owner, contained in Section 2(19) of the M.V. Act, 1939, one cannot help, but hold that unless the respondent No.1 is found to be the registered owner of the vehicle, in question, or unless the respondent No.1's possession of the vehicle is proved to be pursuant to a hire purchase agreement or an agreement of lease or an agreement of hypothecation, the respondent No.1 cannot be regarded as owner of the vehicle under Section 2(30) of the M.V. Act, 1988.
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> **16.** Under the M.V. Act, 1939, registration of vehicle was not the principal consideration for treating a person as owner of the vehicle and, hence, in accordance with the principles embodied in sale of goods, ownership of the vehicle could have changed from one hand to another with the purchase of the vehicle and, if a person, on having purchased a vehicle, had acquired possession and control thereof, he or she could have been regarded as the owner of the vehicle. Under the definition of owner, as given in Section 2(30) of the M.V. Act, 1988, if a registered owner parts with the possession of the vehicle in favour of the person, who has purchased the vehicle, the registered owner still remains the owner of the vehicle even if he ceases to have control and possession of the vehicle. As a corollary thereto, the person, who may have purchased the vehicle, but has not got his name registered as owner of the vehicle, shall not be regarded, for the purpose of Section 168, as owner of the vehicle, though such a person may have the control and possession of the vehicle. In such a case, if the vehicle stood insured, the insurer would be liable to pay compensation to the claimant, notwithstanding the fact that the registered owner has sold the vehicle and the same has not been registered in the name of the purchaser."

(16) I am in complete agreement with the observations of Ansari, J. in ***Smt. Lili Bora*** **vs.** ***Smt. Nishi Rani Hazarika and Ors.*** (supra).

(17) The MACT failed to consider that appellant No.1, Sadhram was not the registered owner of the tractor on the date of accident. Admittedly, the tractor was registered in the name of Ramesh Kumar Gyanchandani on 12-08-2002.

(18) In this view of the matter, even though a registered owner parts with the possession of the vehicle in favour of any person under an agreement to sell or otherwise, such owner continues to be the owner of the vehicle for the purpose of awarding compensation under Section 168 of the Act, 1988, subject to three exceptions mentioned above in the definition of "owner" in Section 2(30) of the Act, 1988. Even where the vehicle is not insured, the same interpretation of Section 2(30) of the Act, 1988 has to follow.

(19) In the result, the impugned award is liable to be set aside and is accordingly set aside. The application under Section 166 of the Act, 1988 is dismissed. The appeal is allowed.

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Gopal